

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 9, 2015

AMENDED IN SENATE MAY 19, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 383

Introduced by Senator Wieckowski

February 24, 2015

An act to amend ~~Sections 430.40 and 472 of~~ *Section 472 of*, and to *add Section 430.41 to*, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Wieckowski. Civil actions: objections to pleadings.

Under existing law, a party in a civil action may object to a complaint, cross-complaint, or answer by demurrer, as specified.

This bill, *until January 1, 2021*, would require a demurring party, before filing the demurrer, to engage in a specified meet and confer process with the party who filed the pleading demurred to for the purpose of determining whether an agreement can be reached as to the filing of an amended pleading that would resolve the objections to be raised in the demurrer.

The bill would require the demurring party, in some circumstances, to file a declaration under penalty of perjury. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 430.40 of the Code of Civil Procedure~~
2 ~~is amended to read:~~
3 ~~430.40. (a) A person against whom a complaint or~~
4 ~~cross-complaint has been filed may, within 30 days after service~~
5 ~~of the complaint or cross-complaint, demur to the complaint or~~
6 ~~cross-complaint.~~
7 ~~(b) A party who has filed a complaint or cross-complaint may,~~
8 ~~within 10 days after service of the answer to the pleading, demur~~
9 ~~to the answer.~~
10 ~~(c) Before filing a demurrer, the demurring party shall meet and~~
11 ~~confer in person or by telephone with the party who filed the~~
12 ~~pleading that is subject to demurrer for the purpose of determining~~
13 ~~whether an agreement can be reached that would resolve the~~
14 ~~objections to be raised in the demurrer. If an amended complaint,~~
15 ~~cross-complaint, or answer is filed, the responding party shall meet~~
16 ~~and confer again with the party who filed the amended pleading~~
17 ~~before filing a demurrer to the amended pleading.~~
18 ~~(1) As part of the meet and confer process, the demurring party~~
19 ~~shall identify all of the specific paragraphs that it believes are~~
20 ~~subject to demurrer and identify with legal support any causes of~~
21 ~~action that are claimed to have not been sufficiently stated. The~~
22 ~~party who filed the complaint, cross-complaint, or answer shall~~
23 ~~provide legal support for its position that the pleading is legally~~
24 ~~sufficient or, in the alternative, how the complaint, cross-complaint,~~
25 ~~or answer could be amended to cure any legal insufficiency.~~
26 ~~(2) The parties shall meet and confer at least five days before~~
27 ~~the date the responsive pleading is due. If the parties are not able~~
28 ~~to meet and confer at least five days prior to the date the responsive~~
29 ~~pleading is due, the demurring party may obtain a 30-day extension~~
30 ~~of time within which to file a responsive pleading, by filing and~~

1 serving, on or before the date on which a demurrer would be due,
2 a declaration stating under penalty of perjury that a good faith
3 attempt to meet and confer was made and explaining the reasons
4 why the parties could not meet and confer. Any further extensions
5 shall be obtained by court order upon a showing of good cause.

6 (3) ~~The demurring party shall file and serve with the demurrer~~
7 ~~a declaration stating the means by which the demurring party met~~
8 ~~and conferred with the party who filed the pleading subject to~~
9 ~~demurrer, and that the parties did not reach an agreement as to~~
10 ~~amendment of all challenged portions of the pleading.~~

11 (4) ~~Any determination by the court that the meet and confer~~
12 ~~process was insufficient shall not be grounds to overrule or sustain~~
13 ~~a demurrer. However, the court may continue the hearing on the~~
14 ~~demurrer and order the parties to meet and confer in compliance~~
15 ~~with this subdivision.~~

16 (d) (1) ~~A party demurring to a pleading that has been amended~~
17 ~~after a demurrer to an earlier version of the pleading was sustained~~
18 ~~shall not demur to any portion of the amended complaint,~~
19 ~~cross-complaint, or answer on grounds that could have raised by~~
20 ~~demurrer to the earlier version of the complaint, cross-complaint,~~
21 ~~or answer.~~

22 (2) ~~If a demurrer is overruled as to a cause of action and that~~
23 ~~cause of action is not further amended, the demurring party~~
24 ~~preserves its right to appeal after final judgment without filing a~~
25 ~~further demurrer.~~

26 (e) ~~If a court sustains a demurrer to one or more causes of action~~
27 ~~and grants leave to amend, the court may order a conference of~~
28 ~~the parties before an amended complaint or cross-complaint or a~~
29 ~~demurrer to an amended complaint or cross-complaint, may be~~
30 ~~filed. If a conference is held, the court shall not preclude a party~~
31 ~~from filing a demurrer and the time to file a demurrer shall not~~
32 ~~begin until after the conference has concluded. Nothing in this~~
33 ~~section prohibits the court from ordering a conference on its own~~
34 ~~motion at any time or prevents a party from requesting that the~~
35 ~~court order a conference to be held.~~

36 *SECTION 1. Section 430.41 is added to the Code of Civil*
37 *Procedure, to read:*

38 *430.41. (a) Before filing a demurrer pursuant to this chapter,*
39 *the demurring party shall meet and confer in person or by*
40 *telephone with the party who filed the pleading that is subject to*

1 *demurrer for the purpose of determining whether an agreement*
2 *can be reached that would resolve the objections to be raised in*
3 *the demurrer. If an amended complaint, cross-complaint, or answer*
4 *is filed, the responding party shall meet and confer again with the*
5 *party who filed the amended pleading before filing a demurrer to*
6 *the amended pleading.*

7 *(1) As part of the meet and confer process, the demurring party*
8 *shall identify all of the specific causes of action that it believes are*
9 *subject to demurrer and identify with legal support the basis of*
10 *the deficiencies. The party who filed the complaint,*
11 *cross-complaint, or answer shall provide legal support for its*
12 *position that the pleading is legally sufficient or, in the alternative,*
13 *how the complaint, cross-complaint, or answer could be amended*
14 *to cure any legal insufficiency.*

15 *(2) The parties shall meet and confer at least five days before*
16 *the date the responsive pleading is due. If the parties are not able*
17 *to meet and confer at least five days prior to the date the responsive*
18 *pleading is due, the demurring party shall be granted an automatic*
19 *30-day extension of time within which to file a responsive pleading,*
20 *by filing and serving, on or before the date on which a demurrer*
21 *would be due, a declaration stating under penalty of perjury that*
22 *a good faith attempt to meet and confer was made and explaining*
23 *the reasons why the parties could not meet and confer. The 30-day*
24 *extension shall commence from the date the responsive pleading*
25 *was previously due, and the demurring party shall not be subject*
26 *to default during the period of the extension. Any further extensions*
27 *shall be obtained by court order upon a showing of good cause.*

28 *(3) The demurring party shall file and serve with the demurrer*
29 *a declaration stating either of the following:*

30 *(A) The means by which the demurring party met and conferred*
31 *with the party who filed the pleading subject to demurrer, and that*
32 *the parties did not reach an agreement as to amendment of all*
33 *challenged portions of the pleading.*

34 *(B) That opposing counsel failed to respond to the meet and*
35 *confer request of the demurring party or otherwise failed to meet*
36 *and confer in good faith.*

37 *(4) Any determination by the court that the meet and confer*
38 *process was insufficient shall not be grounds to overrule or sustain*
39 *a demurrer.*

1 **(b) (1)** *A party demurring to a pleading that has been amended*
2 *after a demurrer to an earlier version of the pleading was sustained*
3 *shall not demur to any portion of the amended complaint,*
4 *cross-complaint, or answer on grounds that could have been raised*
5 *by demurrer to the earlier version of the complaint,*
6 *cross-complaint, or answer.*

7 **(2)** *If a demurrer is overruled as to a cause of action and that*
8 *cause of action is not further amended, the demurring party*
9 *preserves its right to appeal after final judgment without filing a*
10 *further demurrer.*

11 **(c)** *If a court sustains a demurrer to one or more causes of*
12 *action and grants leave to amend, the court may order a conference*
13 *of the parties before an amended complaint or cross-complaint or*
14 *a demurrer to an amended complaint or cross-complaint, may be*
15 *filed. If a conference is held, the court shall not preclude a party*
16 *from filing a demurrer and the time to file a demurrer shall not*
17 *begin until after the conference has concluded. Nothing in this*
18 *section prohibits the court from ordering a conference on its own*
19 *motion at any time or prevents a party from requesting that the*
20 *court order a conference to be held.*

21 **(d)** *This section does not apply to the following civil actions:*

22 **(1)** *An action in which a party not represented by counsel is*
23 *incarcerated in a local, state, or federal correctional institution.*

24 **(2)** *A proceeding in forcible entry, forcible detainer, or unlawful*
25 *detainer.*

26 **(e)** *This section shall remain in effect only until January 1, 2021,*
27 *and as of that date is repealed, unless a later enacted statute, that*
28 *is enacted before January 1, 2021, deletes or extends that date.*

29 SEC. 2. Section 472 of the Code of Civil Procedure is amended
30 to read:

31 472. A party may amend its pleading once without leave of
32 the court at any time before the answer or demurrer is filed, or
33 after a demurrer is filed but before the demurrer is heard if the
34 amended complaint, cross-complaint, or answer is filed and served
35 no later than the date for filing an opposition to the demurrer. A
36 *party may amend the complaint, cross-complaint, or answer after*
37 *the date for filing an opposition to the demurrer, upon stipulation*
38 *by the parties.* The time for responding to an amended pleading
39 shall be computed from the date of ~~filing of a notice~~ service of the
40 amended pleading.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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12 CORRECTIONS: _____

13 Amended House—Page 1.
14 _____